NO. 91-840

Supreme Court, U.S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM 1991

MARY A. COLLINS,
Petitioner

v.

BAPTIST MEMORIALS GERIATRIC CENTER
and ODUS TAYLOR HENLEY,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

Steven C. James

BECK & JAMES, P.C.
218 W. Franklin Avenue
El Paso, Texas 79901
(915) 544-5545

ATTORNEY FOR PETITIONER
MARY A. COLLINS

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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APPENDIX A

Mary A. COLLINS,

Plaintiff-Appellant,

v.

BAPTIST MEMORIALS GERIATRIC CENTER and Odus Taylor Henley,

Defendants-Appellees.

No. 90-1396

United States Court of Appeals,

Fifth Circuit,

Aug. 2, 1991.

Former employee brought suit against employer and supervisor, asserting sexual harassment claim under Title VII, arising from her termination. The United States District Court for the Northern District of Texas, Samuel Ray Cummings, J., found for defendants on Title VII claim, and jury found for defendants on parallel state claims. Plaintiff appealed. The Court of Appeals, Patrick E. Higginbotham, Circuit Judge, held that: (1) district court's finding that plaintiff's termination was not in retaliation for opposition to sexual harassment was not clearly erroneous; (2) plaintiff did not establish sexual harassment claim based on hostile environment; and (3) remand was necessary for further factual findings regarding sexual harassment claim, insofar as claim was asserted under quid pro quo theory.

Affirmed in part, vacated and remanded in part.

Appeal From the United States District Court for the Northern District of Texas.

Before GOLDBERG, HIGGINBOTHAM, and JONES, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Mary Collins appeals an adverse judgment on her Title VII sexual harassment claim. At trial, she developed three theories in support of the claim—retaliation, hostile environment, and quid pro quo. The essence of her claim is that the executive Director of the Baptist Memorial Geriatric Center sexually harrassed female employees and fired her for opposing the harassment. Defendants deny harassment and urge that Collins was fired for insubordination. Most of the issues on appeal relate to the sufficiency of the evidence in support of the district court's judgment. A jury rejected several parallel state claims. We affirm the judgment against Collins insofar as her claim rested on theories of retaliation and hostile environment, but remand for additional findings on the theory of quid pro quo. Collins did not appeal the judgment dismissing her state claims.

I.

Baptist Memorial Geriatric Center hired Mary Collins as personnel director in February of 1986. She asserts that during her tenure as personnel director, she became concerned with the conduct of the Center's executive director, Odus Henley, eventually discussing Henley's relationship with his secretary and his conduct toward other female employees with a member of the Board of Trustees, Bill Denton. There was evidence that Denton asked for more facts before bringing the matter before the Board,

and Collins began gathering statements from female employees at the Center in December of 1987. Although several of the statements are largely directed to Henley's relationship with his secretary, the statements also document tight hugs and other physical contacts with female employees generally. Susan Myers, secretary to executive vice president Wayne Merrill, independently mailed a number of anonymous letters to the Board concerning Henley at about the same time.

On March 21, 1988, shortly after Collins delivered the statements to Denton, Henley fired her. He had earlier issued two formal reprimands. On February 15, 1988, he reprimanded Collins for "[a]pproval or and request for unauthorized salary advances to employees over a period of time." And on March 11, 1988, he reprimanded her for "[a]ssuming authority which had been specifically forbidden and reserved to only the Executive Director who was on duty or the Executive Vice President." Henley issued a third formal reprimand when he fired Collins. At trial, Henley testified that he fired Collins for insubordination. She contends that his real motive was retaliation for her opposition to his conduct toward female employees. The Board of Trustees gave Henley a vote of confidence.

Collins filed this suit against Henley and the Center, alleging both Title VII and state law violations, on January 17, 1989. The Title VII claim was tried to the district court, and the state claims to the jury. The jury found that Collins was not fired for reporting acts of harassment and discrimination or for refusing to ignore harassment and discrimination. The jury also found, however, that the Center had failed to exercise ordinary care in investigating and stopping harassment and discrimination. Reconciling the findings, as we must, the jury presumably believed that there was misconduct but

that Collins was not fired for opposing it. The jury awarded no damages on the breach of care claim, finding that the Center's negligence was not a proximate cause of damage to Collins, and found for the defendants on the remaining state claims.

The district court similarly found for the defendants on the Title VII claim. Some of the district court's factual findings are sketchy if read alone. The court also adopted the jury's findings and cited them in support of its own conclusions. The district court entered judgment for the defendants. Collins appeals the adverse judgment on the Title VII claim to this court but not the judgment on the state claims entered on the jury's verdict.

II.

The parties make much of the shifting burdens of proof outlined by the Supreme Court in *Texas Department of Community Affairs v. Burdine*,[1] and *McDonnell Douglas Corp. v. Green*.[2] The case has been fully tried on the merits. "On appellate review of a fully tried case, we do not concern ourselves with the shifting burdens of proof that are relevant at trial. Rather, we limit our review to the district court's findings on the ultimate question of discrimination vel non."[3] Collins bore the ultimate burden of persuasion on her Title VII claim, a burden that the

[1] 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

[2] 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

[3] *Johnson v. Harris County Flood Control District*, 869 F.2d 1565, 1571 (5th Cir. 1989); *see also Ansonia Board of Education v. Philbrook*, 479 U.S. 60, 67, 107 S.Ct. 367, 371, 107 S.Ct 367, 93 L.Ed.2d 305 (1986); *U.S. Postal Service Bd. of Governors v. Aiken*, 460 U.S. 711, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983); *Comeaux v. Uniroyal Chemical Corp.*, 849 F.2d 191, 193 (5th Cir.1988).

district court believed she had not met.[4]

III.

At trial, Collins developed three theories in support of her Title VII claim—retaliation, hostile environment, and quid pro quo. We address each in turn.

A. *The retaliation claim.*

[1] A plaintiff must show three things to establish a prima facie case of retaliation—that she engaged in an activity protected by Title VII, that an adverse employment action followed, and that there was some causal connection between the activity and the adverse action.[5] Collins' opposition to perceived harassment was a protected activity even in the absence of a hostile environment or quid pro quo actionable under Title VII.[6] At trial, then, whether there was a causal connection between Collins' opposition to Henley and her termination was a major trial issue. Collins need not have established that her protected activity was the sole factor motivating the termination, but the burden was on her to show that " 'but for' the protected activity she would not have been subjected to the action which she claims."[7]

[2] Henley and the Center asserted at trial that Collins was fired for insubordination.[8] When pressed, Henley

[4] *See Burdine*, 450 U.S. at 256, 101 S.Ct. at 1095.

[5] *Jones v. Flagship International*, 793 F.2d 714, 724 (5th Cir.1987).

[6] *Id.* at 727-28.

[7] *Jack v. Texaco Research Center*, 743 F.2d 1129, 1131 (5th Cir.1984).

[8] Several of the witnesses aligned with the defense also mentioned a "personality conflict" between Henley and Collins. Collins conceded

could identify only two specific examples of insubordination, approving cash advances and releasing early paychecks. Henley admitted that he had initially authorized Collins both to approve cash advances and to release early paychecks. He could not point to the date on which he rescinded either authorization, document the fact that he rescinded the authorization, or identify any employees receiving unauthorized advances or early paychecks. Henley attributed his inability to document the unauthorized advances and early paychecks to poor record-keeping.

Collins testified that she generally sent all employees requesting cash advances to Henley or Merrill for approval, but that Henley had told her that she need not do so with small advances. She believed that her first reprimand resulted from a misunderstanding. Henley conceded that all of the cash advances produced from the relevant time period were signed either by himself or by Merrill. Collins also testified that Henley had authorized her to release early paychecks in emergency situations and that he did not revoke the authorization until the second reprimand.[9]

Footnote 8 continued.

that here were tensions between herself and Henley, but claimed that the tensions developed at about the time that she began gathering the statements from female employees. To the extent that a "personality conflict" arose because of Collins' protected activities, rather than independently, the conflict would not provide a legitimate reason for Collins' termination.

[9] Most of the other witnesses at trial, even those aligned with the defense, testified that they had not witnessed any instances of insubordination and that Collins was a good worker. Merrill and former executive vice president Vic Rhoades stated that Collins retained a professional demeanor, suffered no deterioration in her work, and never became insubordinate to them. Kay Wright, assistant personnel director to Collins and personnel director at the time of trial, testified that Collins was personable, likeable, and professional; she had never witnessed

Collins also countered with circumstantial evidence that the defendants' allegations of insubordination were a pretext for retaliation. She testified that she delivered the statements to Denton on the morning that she was terminated. While she was in Denton's office. Denton called the Chairman of the Board, Frank Sanders, and told him that he had the statements and would bring them to Sanders that day. She then returned to the Center and, shortly thereafter, received a phone call from Myers. Myers told her that "Mr. Merrill had come across the hall from Mr. Henley's office and told her that Mr. Henley was extremely angry that he was outraged; that he had never seen him as mad as he was; that Frank Sanders had called Mr. Henley and told him about the reports being turned over to Bill Denton, and that he had told him to plug the leak in personnel." Myers corroborated this statement in her testimony, adding that "[t]here was more than one conversation about leaks in the personnel department." Henley terminated Collins later the same morning.

Henley was unable to identify the "final thing" that prompted him to terminate Collins. He admitted meeting with Merrill that morning, for unrelated reasons, but denied speaking to Sanders. Merrill could not remember if he had spoken to Sanders that morning. He testified that Sanders had mentioned a "leak" to him on another occasion; Sanders was then referring to "an anonymous letter that spelled out some salaries, and they were to the

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Footnote 9 continued.

any acts of insubordination. Sanders and Henley's secretary, Mary Butts, also testified that they had not witnessed any acts of insubordination. Like Henley, neither Merrill nor Wright could identify any unauthorized cash advances or early paychecks.

penny."[10] Sanders denied entirely having spoken with either Henley or Merrill that morning about a "leak" in personnel. He testified that he had received the statements from Denton either that morning or the night before. Although Denton could not remember when he delivered the statements at the time of his deposition, he testified at trial that the had delivered them to Sanders' home at about 5:00 p.m. on the day Collins was fired.

Henley denied knowing that Collins had been gathering statements when he fired her. Denton testified that he never told Henley, Merrill, or Sanders that Collins was the source of the statements. On the other hand, he did discuss the situation without naming Collins with Henley, Merrill, Henley's pastor, a number of the Center's employees and several Board members. Collins was convinced that Henley connected her to the statements because his attitude toward her changed in December of 1987, about the time that she began gathering the statements.

In sum, the evidence produced at trial was complex, confusing, and even contradictory. The resolution of the retaliatory motive issue turned largely on credibility choices. If, as he claimed, Henley had no knowledge that Collins was gathering the statements, then it would be difficult to attribute a retaliatory motive to him. And the strength of the circumstantial evidence of pretext turned largely on the "leak" conversation, a conversation denied by both Henley and Sanders. In fact, the only evidence of the "leak" conversation came from Myers and Collins.

The district court concluded simply that "Mrs.

[10] The "leak" references could conceivably relate to disclosures of confidential information rather than sexual harassment charges. But the defendants did not articulate breaches of confidentiality as a reason for terminating Collins. Collins denied leaking any confidential salary information.

Collins was terminated by Mr. Henley for insubordination." In the absence of the parallel state claims, we might have remanded to the district court for further findings pursuant to Fed.R.Civ.P. 52(a). Rule 52(a) " 'exacts neither punctilious detail nor slavish tracing of the claims issue by issue and witness by witness,' but it does require findings that are explicit and detailed enough to enable us to review them under the applicable standard."[11]

In this case, however, the jury's findings on the parallel state claims lend substantial support to the district court's findings. As stated by the Seventh Circuit in *McKnight v. General Motors Corp.*,[12] "[if] it is clear from the record and the jury's verdict what the jury must have found and therefore what the district judge, in registering agreement with the verdict, must also have found, a remand for explicit findings is not required, because it would add nothing to the information that the appellate court already has." We are persuaded that the findings are not clearly erroneous and the attendant credibility choices were within the province of the jury.

B. *The hostile environment claim.*

[3] A plaintiff must show five things to establish a prima facie case of sexual harassment under a hostile environment theory—that she belongs to a protected group, that she was subject to unwelcome sexual harassment, that the harassment was based on sex, that the harassment affected a term or condition or privilege of employment and

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[11] *Lopez v. Current Director of Texas Economic Development Com'n*, 807 F.2d 430, 434 (5th Cir.1987) (quoting *Ratliff v. Governor's Highway Safety Program*, 791 F.2d 394, 400 (5th Cir.1986)).

[12] 908 F.2d 104, 113 (7th Cir.1990)

if appropriate, some ground to hold the employer liable.[13] At trial the weakest link in Collins' hostile environment claim became the issue of whether any physical contacts of Henley with other female employees altered a term of Collins' employment.

[4] Collins conceded that Henley only hugged her and then only during a short period when she first began working at the Center. She urged that Henley's contact with other female employees affected the psychological terms of her employment. Psychological well-being is a term, condition, or privilege of employment within the meaning of Title VII, but a claim based on psychological harm "requires a commensurately higher showing that the sexually harrassing conduct was pervasive and destructive of the working environment."[14] And harassing incidents not involving Collins herself will not sustain her claim, unless there is evidence that the incidents involving other female employees "affected [her own] psychological well-being."[15]

[5] At trial, Collins presented a number of witnesses who testified to Henley's physical contacts with female employees. Although Henley and his secretary denied any special relationship, several witnesses observed them in questionable circumstances. Most of the witnesses observed Henley tightly hugging female employees or rubbing their backs. Of the plaintiff's witnesses who were themselves hugged by Henley, Kay Wright welcomed the hugs as non-sexual expressions of friendship, but the rest

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[13] *See Jones*, 793 F.2d at 721-22; *compare Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66-67, 106 S.Ct. 2399, 2405-06, 91 L.Ed.2d 49 (1986) (declining to issue a definitive rule on employer liability).

[14] *Jones*, 793 F.2d at 720; *see also Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir.1981).

[15] *Jones*, 793 F.2d at 721 n. 7.

felt uncomfortable when touched by Henley. Perhaps most telling, Henley's hugs were often a subject of conversation, and an object of complaint, among the employees at the Center. Henley and the Center countered with three witnesses who did not find Henley's hugs offensive.

The district court concluded that "uncontroverted testimony" showed that Henley was a "demonstrable person" and that there was no evidence that he was an abuser or molester of women, no evidence that he sought sexual favors from Collins or others, and no evidence that he was lewd or suggestive to Collins. Collins did not contend otherwise. The basis of her claim was the evidence of Henley's hugs and physical contacts with other female employees.

The district court's finding is a mixed conclusion of law and fact, subject to the independent review of this court.[16] The district court's failure to confront the factual issues directly is troublesome. The jury was persuaded that sexual harassment did occur thus crediting Collins' witnesses. The Supreme Court has cautioned, however, that "not all workplace conduct that may be described as 'harassment' affects a 'term, condition, or privilege' of employment within the meaning of Title VII."[17] This was the weak link in Collins' hostile environment theory. Her evidence that conduct toward other female employees was sufficiently severe or pervasive to alter the psychological terms of her own working environment was far from compelling. Significantly, the jury was not persuaded that the

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[16] *See Pullman-Standard v. Swint*, 456 U.S. 273, 289 n. 19, 102 S.Ct. 1781, 1790 n. 19, 72 L.Ed.2d 66 (1982) (noting that the standard of review of mixed questions is an open issue); *Jordan v. Clark*, 847 F.2d 1368, 1375 n. 5 (9th Cir.1988) (stating that the district court's final conclusion, that the defendant's harassment did not alter a term of employment, was a mixed question subject to independent review).

[17] *Meritor Sav. Bank*, 477 U.S. at 67, 106 S.Ct. at 2405.

Center's failure to exercise ordinary care in investigating and stopping instances of discrimination and harassment was a proximate cause of injury to Collins. The district court adopted these findings. This was not error.

C. *The quid pro quo/disparate treatment claim.*

A prima facie case under the quid pro quo theory is essentially the same as under the hostile environment theory, except that the fourth element involves job benefits conditioned on the acceptance of the harassment. "The acceptance or rejection of the harassment by an employee must be an express or implied condition to the receipt of a job benefit or the cause of a tangible job detriment in order to create liability under this theory of sexual harassment."[18]

Collins attempted to prove at trial that female employees receptive to Henley received higher wages and more favorable treatment. Collins herself received one $0.20 raise and three $0.15 raises during her two years at the Center. This theory gained support from the testimony of former executive vice president Vic Rhoades. He testified that several female employees, not specifically identified, approached him while he was at the Center and expressed concern that their response to Henley's hugs and other physical contacts might affect their job. He suggested that Henley's secretary was "put into a position before [he] left that she was not qualified for" because of her relationship with Henley. He also testified that, in his opinion, several of the female employees receptive to Henley "got favorable treatment," a situation that he discussed with two members of the Board. On cross-

[18] *Jones*, 793 F.2d at 722 (quoting *Henson v. City of Dundee*, 682 F.2d 897, 909 (11th Cir.1982)).

examination, however, he stated that he was not aware of any instance where an employee was terminated or adversely affected in salary because she indicated to Henley that she did not want him to hug her.

Several of the other witnesses testified that they noticed no changes in her duties after Henley's secretary was promoted from secretary to retirement administrator; they believed that the promotion was an example of special treatment. Not all could describe Butts' duties as retirement administrator, however. Myers and Collins also believed that the employees receptive to Henley received higher raises and extra vacation time. In an attempt to substantiate the quid pro quo, Collins' attorney led Collins' successor, Kay Wright, through an extensive comparison of the raises of various employees. On cross-examination, the defendants' attorney led her through a comparison of yearly salaries, pointing out that Collins' yearly salary was larger than those of most of the employees receptive to Henley.

The district court did not explicitly explain its evaluation of the evidence. Instead, it stated that Butts' salary was raised from $8.65 an hour to $10.82 an hour upon her promotion to retirement administrator and later to $12.02 an hour to bring her salary in line with other administrative heads. Additionally, the district court added that Butts' and Collins' positions involved different departmental levels and different responsibilities, implying that comparisons were inappropriate. Neither finding addresses Collins' suggestion that she would have received higher raises had she been more receptive to Henley. Certainly the testimony of Wright comparing raises, as opposed to yearly salaries, was at least relevant to the issue.[19]

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[19] The comparison of raises, when considered as a percentage of yearly income, was probably a better indicator of favoritism than the com-

The quid pro quo element of Collins' claim is subject to the independent review of this court. Unlike the retaliation claim, none of the state law claims parallel the quid pro quo claim. We therefore must remand the quid pro quo claim to the district court for further findings.[20] We imply no opinion on the merit of this factual controversy. That is for the district court. While it is understandable that this claim was not separately focused upon given the theories of recovery urged upon the bench and jury, we need further assistance.

IV.

We find no merit in Collins' remaining challenges to the factual findings of the district court. The district court found that "Mrs. Collins considers the fact that Mrs. Butts was paid more than she was paid to be an indication of salary discrimination at the Center." Collins points out that she also testified that other women receptive to Henley received preferences, but of course this does not make the finding cleary erroneous.

The district court described the letters received by the Board of Trustees as "anonymous." Collins contends that "the mistaken implication there is that anonymous means worthless," but we do not find such an implication in the finding.

Footnote 19 continued.

parison of yearly income. This court expresses no view on the comparison of raises at this time. Certainly the comparison of raises must be considered alongside other factors such as work performance.

[20] *See Lopez*, 807 F.2d at 434; *see also Smith v. Texas Dept. of Water Resources*, 799 F.2d 1026, 1031 (5th Cir.1986); *Sylvester v. Callon Energy Services, Inc.*, 724 F.2d 1210, 1216 (5th Cir.1984).

The district court stated that no one was present at the April 12 Board meeting to substantiate the accusations against Henley. Collins points out that Sanders, Denton, Merrill, Dorchester, and Allred were there, but this does not make the finding clearly erroneous because they had only second-hand knowledge of Henley's conduct toward female employees.

Finally, Collins challenges the district court's failure to order its finding under *Burdine* and *Jones*. The cases cited by Collins involved insufficient factual findings.[21] Any weakness in legal analysis by the district court in this case, by contrast, does not make appellate review impossible. Significantly, as we have observed, the shifting burdens outlined in *Burdine* were not relevant after the full trial on the merits.

V.

In sum, we affirm the denial of Collins' Title VII claim insofar as it relies upon theories of retaliation and hostile environment but remand upon the quid pro quo theory for further findings. The district court is not required to take additional evidence. The judgment of the district court is AFFIRMED in part and, in part, VACATED and REMANDED.

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[21] *See Rucker v. Higher Educational Aids Bd.*, 669 F.2d 1179, 1183-84 (5th Cir.1982); *Jefferies v. Harris City. Community Action Ass'n.*, 615 F.2d 1025, 1031 (5th Cir.1980).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 90-1396

FILED
Aug 29 1991

MARY A. COLLINS,
Plaintiff-Appellant,

versus

BAPTIST MEMORIALS GERIATRIC CENTER
and ODUS TAYLOR HENLEY,
Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas

ON PETITION FOR REHEARING

(August 29, 1991)

Before GOLDBERG, HIGGINBOTHAM and JONES,
Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby *denied*

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

ENTERED FOR THE COURT:

/s/ Patrick E. Higginbotham

United States Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

FILED
MAY 3 1990

MARY A. COLLINS	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BAPTIST MEMORIALS GERIATRIC CENTER and ODUS TAYLOR HENLEY,	)	
	)	Civil Action No.
Defendants.	)	CA-6-89-002-C

ENTERED ON DOCKET
5-4-90 PURSUANT
TO F.R.C.P. RULES
58 AND 79a.

JUDGMENT

The above-styled and -numbered cause came on for trial. The parties announced ready. A jury was duly qualified and empaneled.

After hearing the testimony and argument of counsel, the jury retired to consider their verdict. Upon completion of their deliberations, the jury returned into open court their verdict, which was accepted by the Court

and ordered filed with the other papers of this cause. The verdict is referred to and incorporated herein as if set forth in full.

The Title VII claims of the Plaintiff were tried to the Court. The Court has this date entered an order making findings of fact and conclusions of law concerning such claims.

Based upon the jury verdict and for the reasons set forth in the Court's order making findings of fact and conclusions of law, the Court renders the following judgment:

IT IS ORDERED, ADJUDGED, AND DECREED that the Plaintiff, MARY A. COLLINS, do have and recover nothing as against Defendants, BAPTIST MEMORIALS GERIATRIC CENTER and ODUS TAYLOR HENLEY. All court costs are taxed against Plaintiff.

The Clerk shall furnish a copy hereof to each attorney of record.

Entered this 3rd day of May, 1990.

/s/ Sam R. Cummings

SAM R. CUMMINGS
United States District Judge

Certified a true copy of an instrument on file in my office on 6-8-90
NANCY HALL DOHERTY, Clerk,
U.S. District Court, Northern
District of Texas
By /s/A. Loyd, Deputy

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

FILED
MAY 3 1990

MARY A. COLLINS	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BAPTIST MEMORIALS GERIATRIC CENTER and ODUS TAYLOR HENLEY,	)	
	)	Civil Action No.
Defendants.	)	CA-6-89-002-C

ENTERED ON DOCKET
5-4-90 PURSUANT
TO F.R.C.P. RULES
58 AND 79a.

ORDER

The above-captioned case came on for trial. State law causes of action were submitted to a jury for factual determinations. The Title VII claims were tried to the Court. After hearing the testimony, reviewing the exhibits admitted into evidence, and considering the argument of counsel, the Court makes the following findings of fact in reference to the Title VII claims of the Plaintiff:

1. The Court hereby adopts the findings made by the jury. Such answers to the jury questions are referred to and incorporated herein as if set forth in full.

2. At all times relevant to this lawsuit, Defendant ODUS TAYLOR HENLEY ("Henley"), was the Executive Director of Defendant BAPTIST MEMORIALS GERIATRIC CENTER ("the Center"). The Center is a Texas corporation with its business located in San Angelo, Tom Green County, Texas. Defendant Henley is the top officer of the Center. Plaintiff, MARY A. COLLINS ("Collins"), was hired as Personnel Director of the Center on February 17, 1986. Her employment with the Center was for no set term and was subject to termination without notice on the part of either Mrs. Collins or the Center. Mrs. Collins was terminated on March 21, 1988.

3. Prior to joining the Center, Mrs. Collins attended high school and subsequently obtained her G.E.D. She has no college degree. She has attended various management training seminars and court reporting schools. Mrs. Collins is 43 years old.

4. Mr. Henley is 72 years old. He has an undergraduate degree from Howard Payne University and a Divinity Degree from Southwest Baptist Seminary. He also received an honorary doctorate degree from Howard Payne. At age 24, he was one of the two youngest chaplains in the United States Army. In World War II, he was decorated with both the Bronze Star and Silver Star medals. Following World War II, he served as the minister at Immanuel Baptist Church for 12-½ years and then joined the Center in 1962, as the Director of Religious Activities and Public Relations. He became Executive Director of the Center in 1971.

5. In the last 28 years, the Center has grown into a multi-level retirement and medical care community for the care of retired and elderly persons beginning at 62 years of age. The Center is located on a 75-acre tract of land and features a retirement high-rise building, cottage and duplex units for a total of 315 living units. These units include 82 individual houses, 53 duplex units, 48 apartments in the high-rise building, plus 79 rooms and suites. The multi-level medical facilities include 315 beds which provide long-term care in the hospital, skilled nursing facility, and intermediate care facility. The Center has a total of 660 residents. It is inspeeted regularly by the Texas Department of Health and Human Services and has had its license for all units renewed each year following these inspections. The nursing home received a superior rating from the Department of Health in 1988, which is the highest rating possible in the State of Texas.

6. Mrs. Mary Butts is the 56-year-old Executive Secretary and Retirement Administrator at the Center. She was hired at the Center on September 7, 1982, as Executive Secretary to Mr. Henley and was promoted to Retirement Administrator on December 29, 1985, prior to the employment of Mrs. Collins at the Center. When Mrs. Butts was promoted to Retirement Administrator, her salary was increased initially from $8.65 an hour to $10.82 per hour. Subsequently, she was raised to $12.02 an hour on August 24, 1986, and then to $14.42 ($30,000 a year) on December 13, 1987, to bring her salary into line with the salaries paid to other administrative heads at the Center.

7. Mrs. Butts' position at the Center was on an administrative level and Mrs. Collins' job was on a departmental level with each job having different levels of responsibility. Mrs. Collins considers the fact that Mrs. Butts was paid more than she was paid to be an indication of salary

discrimination at the Center.

8. After going to work at the Center, Mrs. Collins worked closely with Mr. Vic Rhodes, the Executive Vice President of the Center. In the course of time, it was assumed that Mr. Rhodes (age 39) would replace Mr. Henley as the Center's Executive Director. However, Mr. Rhodes was terminated at the Center in 1987, and Mrs. Collins' and Mr. Henley's working relationship deteriorated thereafter.

9. Mrs. Collins received reprimands and warnings on February 15, 1988, and March 11, 1988, for approval of and request for unauthorized salary advances to employees over a period of time and for assuming authority which had been specifically forbidden and reserved only to the Executive Director who was on duty or the Executive Vice President. She received an additional reprimand for insubordination on March 21, 1988, for approving cash advances to employees without executive approval and was terminated.

10. Mrs. Collins first sought legal advice when Mr. Henley began giving her reprimands in early 1988. Prior to her termination, she also called the EEOC and was advised to document the things that were happening to her. Accordingly, Mrs. Collins prepared and filed various memos to her personnel file documenting her clashes with Mr. Henley at the Center. These memos are complaints by Mrs. Collins primarily concerning salary matters and perceived rudeness to her on the part of Mr. Henley. Mrs. Collins also documented her rebuttal to the reprimands that she received on February 15, 1988, and on March 14, 1988. She complained of her lack of authority in her position and that Mr. Henley always needed to blame someone. She complained that she was the scapegoat and she considered the

reprimands to be personal attacks on her. In none of the rebuttals are any claims made of sexual discrimination or misconduct on the part of Mr. Henley. However, Mrs. Collins did observe Mr. Henley to touch and hug various employees and patients at the Center and she considered these touchings to be offensive.

11. In late 1987 and early 1988, the Trustees of the Center began to receive numerous anonymous letters as well as telephone calls of complaint about Mr. Henley's administration of the Center as well as claims that Mr. Henley and Mrs. Butts were having an affair. There were also complaints that Mr. Henley was offensive in the way he hugged women at the Center.

12. Prior to her termination, Mrs. Collins approached a board member of the Center, Mr. Bill Denton, complaining of sexual harassment by Mr. Henley. Mr. Denton stated that the Board needed facts to work with from the people who had witnessed any improprieties and said that he could not go to the board with simply anonymous complaints. Thereafter, Mrs. Collins began gathering statements to turn over to Mr. Denton concerning various complaints. These complaints were unsigned and were delivered to Mr. Denton on March 21, 1988.

13. Mr. Denton delivered these unsigned complaints against Mr. Henley to Frank Sanders, the Chairman of the Board of Trustees of the Center, on March 21, 1988. At no time did Mr. Denton tell Mr. Sanders nor Mr. Henley the name of the person who had delivered the complaints to him. That same afternoon of March 21, 1988, however, Mrs. Collins was terminated by Mr. Henley for insubordination.

14. Mr. Sanders first learned that Mrs. Collins had

provided the various complaints to Bill Denton after her termination. He met with Mrs. Collins and Bill Denton on April 5, 1988, at his office. He was told at that time by Mrs. Collins that there were people who were willing to come forward and tell the Board their complaints contained in their various unsigned letters. She also informed Mr. Sanders that she had retained an attorney to represent her.

15. A meeting of the Executive Committee of the Board of Trustees was called by Mr. Sanders for April 12, 1988, at 1:30 p.m. to deal with the anonymous allegations that the Board had been receiving, both over the phones and through the mail. Mrs. Collins was given the opportunity to appear and bring anyone who wanted to voice a complaint against Mr. Henley or the Center and to speak to the Board members. Mrs. Collins was informed on April 5, 1988, that Mr. Henley would also have the right to be present.

16. On April 12, 1988, the called meeting of the Executive Committee of the Board of Trustees was held to discuss the many anonymous letters and telephone calls regarding the character and capability of the Executive Director, Mr. Taylor Henley. However, Mrs. Collins and any witnesses who had any complaint failed to appear. As a result, there was no one to substantiate the accusations.

17. Following Mrs. Collins' termination, she was unemployed from March 21, 1988, until August 15, 1988. She has been employed from August 15, 1988, to the present as Assistant to the Academic Coordinator of Concho Career Institute, Inc. in San Angelo at a salary of $1,000 a month. Prior to gaining her present employment, Mrs. Collins applied for work at a law firm in San Angelo, as well as the U. S. Post Office, the Census Bureau, Dillard's, Penney's, Skaggs Alpha Beta, and the Texas Parks and Wild-

life Department. During this same period of time, others were also searching for jobs in the local economy due to the depression in the West Texas oil business. No one has ever told Mrs. Collins specifically that Mr. Henley has ever said anything slanderous about her since her termination at the Center.

18. The uncontroverted testimony, including that given by the Plaintiff, shows that Taylor Henley was a demonstrable person. He hugged patients and residents at the Center as well as some of the employees. There is no evidence to show that Henley was a molester or abuser of women. No evidence was elicited which showed Henley seeking sexual favors from Plaintiff or anyone else. Henley was not lewd or suggestive towards the Plaintiff. Mrs. Collins never complained to Taylor Henley about his hugging either the Plaintiff or others. The Plaintiff never heard others complaining to Mr. Henley about his hugging. The Plaintiff never heard Henley hugging anyone who did not want to be hugged. To a great extent, the Plaintiff considers all touching to be offensive; she realizes, however, that many women do not share her attitude. The Plaintiff's problems with Mr. Henley did not start until December of 1987. Up to that point, Mr. Henley gave Mrs. Collins good job evaluations.

Based upon the above findings, the Court makes the following conclusions of law in reference to the Plaintiff's Title VII claims:

1. The Plaintiff has not proven a case of sexual harassment against either Defendant BAPTIST MEMORIALS GERIATRIC CENTER or Defendant ODUS TAYLOR HENLEY.

2. The evidence does not support a recovery under

Title VII on a "quid pro quo" theory, a hostile or offensive working environment theory, a retaliation theory, or disparate treatment theory.

3. The answers of the jury to Questions Nos. 1 and 3 support the Court's finding and conclusion concerning any retaliation theory.

4. The jury answer to Question No. 6 supports the Court's finding and conclusion that Mrs. Collins has sustained no damage or detrimental effect by virtue of any claimed sexual harassment.

As a result, in reference to the Title VII claim, judgment shall be entered for the Defendants in accordance with the above findings of fact and conclusions of law. Costs of court are taxed against Plainfiff.

IT IS SO ORDERED.

The Clerk shall furnish a copy hereof to each attorney of record.

Entered this 3rd day of May, 1990.

/s/ Sam R. Cummings

SAM R. CUMMINGS
United States District Judge

Certified a true copy of an instrument on file in my office on 6-8-90
NANCY HALL DOHERTY, Clerk,
U.S. District Court, Northern
District of Texas
By /s/ A. Loyd Deputy

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

FILED
APR 3 1990

MARY A. COLLINS	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BAPTIST MEMORIALS GERIATRIC CENTER and ODUS TAYLOR HENLEY,	)	
	)	Civil Action No.
Defendants.	)	CA-6-89-002-C

COURT'S CHARGE TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all of the evidence, it becomes my duty to give you the instructions of the Court concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in the case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a corporation may bind the corporation by his acts and declarations made while acting within the scope of his authority delegated to him by the corporation, or within the scope of his duties as an employee of the corporation.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence

I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

Generally speaking, there are two types of evidence which a jury may consider in properly finding the truth as to the facts in this case. One is direct evidence — such as testimony of an eyewitness. The other is indirect or circumstantial evidence — the proof of a chain of circumstances which points to the existence or nonexistence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from a preponderance of all the evidence, both direct and circumstantial.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his testimony. In weighing the testimony of a witness, you should consider his relationship to the plaintiff or to the defendant; his interest, if any, in the outcome of the case; his manner of testifying; his opportunity to observe or acquire knowledge concerning the facts about which he testified; his candor, fairness and intelligence; and the extent to which he has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

During the trial of this case, certain testimony has been read to you by way of depositions, consisting of sworn, written answers to questions asked of the witness in advance of trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand, is usually presented in writing under oath, in the form of a deposition. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, and otherwise considered by the jury in the same way, insofar as possible, as if the witness had been present and had given from the witness stand the same testimony as given in the deposition.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify and state his opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

The burden is on the plaintiff in a civil action such as this to prove every essential element of his claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" merely means to prove that the claim is more likely so than not so.

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have introduced them. If the proof should fail to establish any essential element of plaintiff's claim by a preponderance of the evidence, the jury should find for the defendant as to that claim.

A witness may be "impeached" or discredited by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time he or she said or did something, or failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, it is in your exclusive province to give the testimony of that witness such credibility or weight, if any, as you think it deserves.

In answering the questions which I will submit to you, answer "yes" or "no" unless otherwise instructed. A "yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no."

After I have completed reading this Charge to you and have reviewed the verdict form, instructions, and jury questions, counsel will have the opportunity to make their closing arguments.

Your verdict must represent a considered judgment of each juror. In order to return a verdict, it is necessary that all members of the jury agree thereto. You may not therefore enter into an agreement to be bound by a majority or any vote other than a unanimous one.

Remember at all times you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room, you should first select one of your number to act as your presiding officer who will preside over your deliberations and will be your

spokesman here in Court. A verdict form has been prepared for your convenience. Your presiding officer will sign in the space provided below after you have reached your verdict.

If, during your deliberations, you wish to communicate with the Court, you should do so only in writing by a note handed to the Deputy Marshal and signed by the presiding officer. During your deliberations, you will set you own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long.

After you have reached your verdict, you will return this charge together with your written answers to the questions that I will submit to you. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me.

Date: April 13, 1990

/s/ Sam R. Cummings

SAM R. CUMMINGS
United States District Judge

Fraud occurs when one makes a misrepresentation of a material fact to another and the other relies upon it to his detriment. In order to establish her claim against the Defendants for damages based upon fraud by Defendants, Plaintiff must prove by a preponderance of the evidence the following elements:

(1) that Defendants made a material representation;

(2) that it was false;

(3) that when Defendants made it, they knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion;

(4) that Defendants made it with the intention that it should be acted upon by Plaintiff;

(5) that the Plaintiff acted in reliance upon it; and

(6) that she thereby suffered injury.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence, then you must return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements, then you should find for Defendants.

Plaintiff contends that Defendants engaged in a series of actions which constituted an intentional infliction of emotional distress. In order to establish her claim against Defendants for damages based upon the theory of intentional infliction of emotional distress, Plaintiff must prove by a preponderance of the evidence the following elements:

(1) the Defendants acted intentionally or recklessly;

(2) the conduct was "extreme and outrageous";

(3) Defendants' actions caused the Plaintiff emotional distress; and

(4) the emotional distress suffered by Plaintiff was severe.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence, then you must return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements, then you should find for Defendants.

Slander is a verbal defamation, and libel is a written defamation. The statements do not have to name Plaintiff if it can be reasonably inferred that the statement was referring to her. In order to establish her claim against Defendants for damages based upon slander or libel, Plaintiff must prove by a preponderance of the evidence the following elements:

(1)that Defendants made verbal or written statements concerning Plaintiff;

(2) that the statements were made to third persons;

(3) (a) that the statements tended to injure the reputation of Plaintiff and thus expose her to public hatred, contempt, ridicule or financial injury, or impeach her honesty, integrity, virtue or reputation, or

(b) that the statements injure Plaintiff in her office, business, profession, or occupation.

(4) that the statements were actuated, inspired or colored by actual or express malice, existing as a fact at the time of the publication, or by some evil motive or bad faith.

The burden of proof is on the plaintiff to show actual malice. Actual malice is shown when Defendants acted with knowledge that a statement was false or with reckless disregard of whether it was false or not.

Truth is a defense. The burden is on Defendants to establish the truth of the statements.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence and Defendants have failed to establish the statements were true, then you must return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements or that Defendants have established the statements were true, then you should find for Defendants.

Plaintiff contends that Defendants breached a portion of Article 4442c which is a state statute that relates to convalescent and nursing homes and related institutions. The portion of Article 4442c that Plaintiff contends defendants violated essentially prevents an employer from terminating an employee for reporting the abuse or neglect of a nursing home's patients to the person's supervisors. In order to establish her claim against Defendants for damages based upon such a breach by Defendants, Plaintiff must prove by a preponderance of the evidence the following elements:

(1) that Plaintiff reported the abuse or neglect of nursing home patients to Plaintiff's supervisors; and

(2) that Defendants terminated the employment of Plaintiff as a result of the reporting of the abuse or neglect of nursing home patients to Plaintiff's supervisors.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence, then you must return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements, then you should find for Defendants.

Plaintiff brings a claim against the Center for failing to exercise ordinary care in investigating and stopping alleged instances of sexual discrimination and harassment. In order to establish her claim against Defendant Center for damages caused based upon such a failure by the Center, Plaintiff must prove by a preponderance of the evidence the following elements:

(1) that Defendant Henley was harassing female employees at the Center and discriminating against them because of their sex;

(2) that the Board of Trustees knew or should have known of the sexual harassment and discrimination; and

(3) that the Board of Trustees failed to exercise ordinary care by failing to investigate and stop the instances of sexual harassment and discrimination, that is, that a person of ordinary prudence under the same or similar circumstances would have investigated and halted the alleged sexual discrimination and harassment.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence, then you must return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements, then you should find for Defendants.

Plaintiff contends that the Center terminated her employment not for justifiable reasons but for improper reasons, that is, for reasons relating to her reporting acts of sexual harassment and discrimination or in refusing to ignore these actions as Personnel Director. In order to establish her claim against Defendants for damages based upon her claim of wrongful termination, Plaintiff must prove by a preponderance of the evidence the following elements:

(1) that Defendants terminated her employment at the Center; and

(2) that the basis for Defendants' termination of her employment was related to her reporting acts of sexual harassment and discrimination or in refusing to ignore such activity in her capacity as Personnel Director.

If you find that Plaintiff has established each of these elements by a preponderance of the evidence, then you should return a verdict in her favor. If, on the other hand, you find that she has failed to so establish any one or more of these elements, then you should find for Defendants.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred; and in order to be a proximate cause, the act or omission

complained of must be such that the person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Mental anguish" or "emotional distress" means more than mere worry, anxiety, vexation, embarrassment or anger. The term "mental anguish" or "emotional distress" implies a high degree of mental pain and distress including a mental sensation of pain resulting from grief, severe disappointment, indignation, wounded pride, shame, despair or public humiliation.

You are further instructed that Question 17 asks whether exemplary damages should be assessed against Defendants. In deciding whether to assess exemplary damages against Defendants, you are hereby instructed that exemplary damages are not allowed as a matter of right or as compensation. Exemplary damages serves the public interest of punishment to wrongdoers and deterrence to others from similar conduct in the future. In order to assess punitive damges, you must find that Defendants acted willfully, knowingly, deliberately or designedly in the prepetration of the wrongful acts. You are further instructed that exemplary damages may be assessed where there had been reckless disregard of the rights of another.

An act is done recklessly if it involves acts of bad faith, conscious indifference, malice or wanton disregard for the rights of others.

If you conclude from a preponderance of the evidence that Defendants have engaged in the alleged wrongful actions willfully, knowingly, deliberately, with malice, ill will, intent to harm, or with reckless disregard of the rights of Plaintiff, then you should assess exemplary damages against Defendants. If, on the other hand, you conclude that Plaintiff has failed to show the requisite intent by a preponderance of the evidence, then you should refrain from assessing exemplary damages.

QUESTION NO. 1

Was Mary Collins wrongfully terminated by the Center for reporting acts of harrassment and discrimination?

Answer "Yes" or "No."

Answer: No

If you have answered "Yes" to Question No. 1, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 2

Was the wrongful termination of Mary Collins by the Center the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 3

Was Mary Collins wrongfully terminated by the Center for refusing to ignore sexual harrassment and discrimination?

Answer "Yes" or "No."

Answer: **No**

If you have answered "Yes" to question No. 3, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 4

Was the wrongful termination of Mary Collins by the Center the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 5

Did the Center fail to exercise ordinary care in investigating and stopping alleged instances of sexual discrimination and harassment?

Answer "Yes" or "No."

Answer **Yes**

If you have answered "Yes" to Question 5, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 6

Was the Center's failure to exercise such ordinary care the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: **No**

QUESTION NO. 7

Was Mary Collins' report of abuse or neglect of residents at Baptist Memorials Geriatrics Center the reason or one of the reasons that the Center or Henley terminated Mary Collins' employment?

Answer "Yes" or "No" for each Defendant.

Center **No**

Henley **No**

QUESTION NO. 8

Did Defendants defraud Mary Collins in the representation that the Center did not allow or condone sexual discrimination and harassment?

Answer "Yes" or "No" for each Defendant.

Center **No**

Henley **No**

QUESTION NO. 9

Did the Center defraud Mary Collins by representing that if she submitted statements concerning improprieties by Defendant Henley that she would not be fired for doing so?

Answer "Yes" or "No."

Answer: **No**

If you have answered "Yes" to either part of Question 8 or to Question 9, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 10

Was Defendants' fraud the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 11

Did Defendants slander or libel Mary Collins?

Answer "Yes" or "No" for each Defendant.

Center **No**

Henley **No**

If you have answered "Yes" to either part of Question 11, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 12

Was Defendants' slander or libel of Mary Collins the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: _____

QUESTION NO. 13

Did Defendants intentionally inflict emotional distress on Mary Collins?

Answer "Yes" or "No" for each Defendant.

Answer:

Center **No**

Henley **No**

If you have answered "Yes" to either part of Question 13, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 14

Was Defendants' intentional infliction of emotional distress on Mary Collins the proximate cause of damages to Mary Collins?

Answer "Yes" or "No."

Answer: _____

If you have answered "Yes" to either Question No. 2, 4, 6, 7, 10, 12, or 14, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 15

What amount of money, if paid now in cash, would fairly and reasonably compensate Mary Collins for the injury or damage, if any, she has sustained as a proximate result of the actions of Defendants?

Consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element. Do not include interest on any amount of damages you find.

Answer in dollars and cents for damages, if any, as to each of the following elements:

A. Loss of past wages, if any, sustained by Mary Collins

Answer: _____

B. Loss of future wages, if any, reasonably expected to be sustained by Mary Collins

Answer: _____

C. Damages for injury to the reputation of Mary Collins

Answer: _____

D. Mental anguish and emotional distress, if any, suffered by Mary Collins

Answer: _____

If you have answered "Yes" to either Question No. 2, 4, 6, 7, 10, 12, or14, then answer the following question; otherwise, do not answer the following question.

QUESTION NO. 16

Were any of Defendants' wrongful actions done knowingly, deliberately, with malice, or with reckless disregard to the rights of Mary Collins?

Answer "Yes" or "No" for each Defendant.

Answer:

Center _____

Henley _____

If you have answered Question 16, "yes," as to either Defendant then answer the following question as to such Defendant; otherwise, do not answer Question 17.

QUESTION 17

What sum of money, if any, should be awarded to Mary Collins against Defendants as exemplary damages?

"Exemplary damages" means an amount that you may in your discretion award as an example to others and as a penalty or by way of punishment, in addition to any amount that you may have found as actual damages.

Answer in dollars and cents, if any.

Answer:

Center _____

Henley _____

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

/s/ Illegible

Presiding Officer of the Jury

APPENDIX F

March 12, 1988

To Whom It May Concern,

During the term of my employment at Baptist Memorial Center I felt I was sexually harassed by Taylor Henley. Unfortunately I am not alone in this affair. Many other female staff members have been imposed upon also.

The problem is in the manner in which Mr. Henley greets certain female staff members. Mr. Henley has a habit of placing his arm around the shoulder with the hand either resting on the side of the breast or at the top of it and then pulling the female closer to him. He appeared to be selective as to the staff position as to whom he would embrace in this manner. I personally felt trapped when these encounters took place and unable to prevent the situation from occuring.

One staff member thought being a new employee that by wearing a long line bra she could deter or discourage this unwelcome behavior.

My husband and I have been married for a very long time and I am not in any extramaritial experiences. Never in any personal or business relationship have I encouraged this type of familiarity from a male. You may consider my complaint petty but I assure you if your wife had to put up with a feeling of being molested everyday at work you perhaps would think twice.

Thank You,

CASE NO. CA6-89-0002-C
Collins
VS. Baptist Memorials
Plaintiff's Exhibit 1

March 15, 1988

TO WHOM IT MAY CONCERN:

1987 — I went to Mr. Henley's office to talk to him about a problem. No one was sitting out at the front desk where Mrs. Butts sits so I went on back into Mr. Henley's office.

When I walked into the doorway of Mr. Henley's office, I notice Mr. Henley and Mary Butts over to the right. Mr. Henley had her pulled up in his arms, his arms around her and she was looking up at him. They had been hugging each other. His hands were on her behind.

I was very embarrassed, said "Excuse me," and walked out as fast as possible. I did not know what to do about this. I am very uncomfortable about this and I worry about my losing my job all the time because of this incident.

/s/Clyde S. Sanchez

Clyde S. Sanchez
Director of Housekeeping

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
Plaintiff's Exhibit 2

I went to Mr. Henley's office to ask for my check early, there was no one sitting at the front desk, I heard his voice in his office and his door was half open, so I knocked twice and walked in. Mrs. Butts was standing facing the book shelf, Mr. Henley was standing behind her with both of his hands on her butt. I said excuse me and started to walk out. Then he said in an angry voice, "what do you want." So I told him, he said "OK" and rushed me out and shut the door behind me.

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
Plaintiff's Exhibit 3

TO: BOARD OF TRUSTEES -
BAPTIST MEMORIALS CENTER

ON SEVERAL OCCASIONS I HAVE SEEN MR. HENLEY GIVING THE NURSES HUGS AND SQUEEZING THEM.

WHEN I FIRST CAME TO WORK AT BMGC, HE WOULD ALWAYS TRY TO GRAB ME OR RUB MY SHOULDERS. THIS MADE ME VERY UNCOMFORTABLE. I ALWAYS TRIED TO AVOID HIM WHEN POSSIBLE. IT WAS A JOKE AMONG THE WOMEN EMPLOYEES.

/s/ Mary Ann Flores

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 4

BOARD OF TRUSTEES

TO WHOM IT MAY CONCERN:

One day while out at BMC I had been taking care of the watering of plants on the patio. I had noticed that water was running down the streets and decided to see if Mr. Henley knew that the yard employees were not taking care of this and allowing the water to be wasted.

I went walking into Mr. Henley's office and he was sitting on the corner of his desk with Mary Butts leaning up towards him. She was standing between his legs up against him. He looked up when he saw me and studdered (sic) and stammered and said "What do you want ____?" I told him that I just wanted him to know about the water and turned and left as quickly as I could.

Ruth Bateman

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 5

March 18, 1988

TO WHOM IT MAY CONCERN:

When I first was employed at BMC, Mr. Henley always had to come into the office to hug and squeeze me and try to stand as close to me as possible. I soon learned to keep the desk or a good distance between us. I think he soon got my message.

I have personally been in the office when Mr. Henley came through and went around behind a lady and stood there and rubbed her back and shoulders. He snapped her bra while standing there. When he left, this employee took a deep gasp and asked if we heard that? A few weeks later Mr. Henley was in our office again. He was standing behind a female employee rubbing her back. When he left the employee told us that she knew Mr. Henley was surprised because he could not find a bra strap to snap.

I walked in on another incident one day where he had a female employee cornered. She was bent over and he had his hands where they should not have been. I was very embarrassed and turned around and walked out. I walked back to another office and waited to see how long they would stay back there. I timed them — exactly 12 minutes. Mr. Henley came down the hall and saw that I was still there and was quite upset to see me still there. So was the female employee.

I walked in on him and a female employee (different woman) down in Medical Records one day, also. He had her all pulled up with his arms around her. He was bent down in her face. He straightened up and gave me a hard look. I stood in the doorway and did not leave on purpose. He released her and walked out.

I have had numerous employees come to me about this problem. Because of being employed at BMC, they are afraid for their jobs. For some reason they feel I should be able to stop these sort of incidents. It should not be permitted to happen.

/s/ *Mary Collins*
Personnel Director

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Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 6

March 16, 1988

I worked for Mr. Henley for five months. He never bothered me since I made it clear that I did not approve of the patting and feeling. I witnessed a lot of it with all of the women.

On one occasion, he had me go down to Div. 6 with him to a little old ladies room. He had a deed prepared for her to sign. She was very ill. I cannot remember her name but I am sure if you checked with Medical Records you could find out her name. She did not want to sign the deed until her son came later that afternoon. He badgered and demanded that she sign it right then. She pleaded and cried and told him that she did not want to sign it until her son arrived. He kept on and on at her until she finally signed the will. I had never seen anything like that done before and was very upset over it. She passed away soon after that and he confiscated everything she had.

I am a Christian and could not abide with such behavior. I soon resigned and found work elsewhere. I have seen what sort of a person Mr. Henley is. I am sure if you checked the Court House you would be surprised at the number of wills that are a matter of public record which are naming him, personally, as beneficiary.

Margaret A. Litton

CASE NO. CA6-89-0002C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 7

APPENDIX G

February 8, 1988

Dr. Jerold McBride
3225 Alta Vista Drive
San Angelo, Texas 76904

Dear Dr. McBride:

Enclosed is a copy of a letter mailed out today to each member of the Board of Trustees of Baptist Memorials Center. It hurts me very deeply to know that you, as a man of God and Chairman of the Human Welfare Coordinating Board, would condone the activities of Taylor Henley, both in regard to Baptist Memorials Center as a whole and in his personal relationship with Mary Butts.

As a leader of the Church, you were informed about what was going on there and have chosen to look the other way. I, as well as many, many others, have lost a great deal of respect for you and wonder now who we are to turn to in the future with our problems. Your failure to act on the information you received has placed you in a position of responsibility for Taylor Henley's actions and for any negative publicity that is sure to come from this situation. The residents of the Village and High Rise, patients in the Hospital and Nursing Home and employees of Baptist Memorials Center have prayed and endured long enough. This is indeed a dark hour for all Baptists and others who have put their trust in Taylor Henley. Hopefully, prayer

will help you through this time and lead you to do what is right.

Sincerely,

A Dream of God

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 22

February 8, 1988

Mrs. Evelyn Linebery
Box 1536
Midland, Texas 79701

Dear Mrs. Linebery:

Enclosed is a copy of a letter that went out today to Dr. Jerold McBride as well as a copy of a letter that went to each member of the Board of Trustees of Baptist Memorials Center.

Because you have played such an important role in the development of Baptist Memorials Center over the years and because you are such a caring and gracious lady, it was only fitting that the situation at Baptist Memorials Center be handled quietly, before a scandal was enevitable. (sic) However, such no longer seems possible because no one seems to want to get involved. But all of us are involved and the few of us are now many and the situation at Baptist Memorials Center has reached an intolerable level.

We appologize to you for what the future might bring but as Christians, we cannot allow the behavior of Taylor Henley and his personal relationship with Mary Butts to destroy the good that has been done at Baptist Memorials Center.

Sincerely in Christ,

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 23

March 26, 1988

William M. Pinson Jr.
Executive Director
Baptist General Convention of Texas
511 North Akard
Dallas, Texas 75201

Dear Mr. Pinson:

Enclosed are copies of the letters that went out to the Board of Trustees of Baptist Memorials Geriatric Center in San Angelo on February 8, 1988 and March 26, 1988, as well as a copy of the letter that went to Dr. Jerold McBride, Chairman of the Human Welfare Coordinating Board. We are asking for your help as Executive Director of the Baptist General Convention of Texas to help us in our hour of need. We don't believe that the Board of Trustees will take any action on our problems or on Taylor Henley's immoral behaviour and this situation will not be tolerated any longer by the people who live and work at Baptist Memorials.

We fear that if Taylor Henley and various Board members find out specifically who the people are that are trying to change this situation, that the employees will be fired and the residents of the Village and High Rise will be made to pay for trying to stand up for themselves. We do not want for this situation to become a public scandal, but we will be heard and we do expect action to be taken. Please try to help us; ask some questions; send in outsiders to investigate; anything that will give Baptist Memorials a chance to survive.

Again, I cannot sign my name to this letter as I am really not absolutely sure that you can be trusted either. I have found that Board members as well as Dr. McBride have chosen to look the other way and have been proven to be most untrustworthy. We pray that God will direct you.

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 24

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 25

February 8, 1988

Board of Trustees
Baptist Memorials Geriatric Center
902 N. Main
San Angelo, Texas 76903

Dear Board Member:

Another Board Meeting has come and gone and you, as a member of the Board of Trustees of Baptist Memorials Center have again chosen to ignore a potentially disasterous situation that exists at a place you are supposed to care about. For over a year now, different members of the Board have been contacted regarding problems in three separate areas at Baptist Memorials Center and it is time that every member of the Board be made aware of these problems. They need to be dealt with now, before they cause a black eye for all Trustees and all who call ourselves Baptist Christians. I do not understand why we have to wait until an outcry becomes public or until a scandal is inevitable before we choose to act. You, as a member of the Board of Trustees are responsible for the institution, its patients, Villagers and High Rise residents and the employees who work so hard to make our Ministry a reality. I write this letter unsigned as I fear reprisals from Taylor Henley and possible from some of you as the Board of Trustees, but my God tells me that these things need to be brought out in the open if we are to accomplish the goals of our ministry. Please try to read this letter with an open mind; it's time someone took the problems seriously. They are not going to go away.

First, to my knowledge, the employees of Baptist Memorials Center are on the average some of the lowest paid in San Angelo. The majority can look forward to a 5¢ an hour per year increase which doesn't even keep up with the cost of living. This 5¢ was guaranteed by a Wage and Salary Program that was adopted by the Board of Trustees two years ago. Since that time, Taylor Henley has opted to do away with it because it restricted him to giving raises fairly, based upon performance. The situation was worsened by Taylor Henley's decisions to pass out *everyone's* raises to just a few people that *he* deemed worthy. In the meantime, employees come and go and have no financial security to look forward to. The Board should take some responsibility in assuring that the employees can at least rise above the poverty level and that they are treated fairly. How can it be expected that quality care be given when so many people never stay long enough to be properly trained? This situation not only effects the employees who work for Baptist Memorials Center, but it effects every patient that depends on them for care. I probably wouldn't know any of this if there weren't so many unhappy people at Baptist Memorials Center.

The patients within the Hospital and Nursing Home as well as residents in the Village and High Rise are virtually at the mercy of one man, Taylor Henley. New furniture and equipment is needed for the hospital, but there never seems to be any money for such things. Taylor Henley seems to be oblivious to the fact that patients as well as their families are depending on Baptist Memorials Center to care for their loved ones. It just doesn't seem to matter to him. The residents in the High Rise and Village are intimidated and bullied by Taylor Henley's dictator type attitude. These people are not children and his answer of "Because *I* said so" doesn't seem to be an appropriate answer when people are looking to Taylor Henley for answers. So many

residents with the exception of Taylor Henley's chosen few, feel trapped in this place instead of enjoying their senior years in comfort and peace. A true Retirement Administrator is needed to organize activities and genuinely care about the people who have committed to spend the rest of their lives here. Unless one is a member of the Glory Choir or will opt to pay for Taylor Henley's vacations each year, there are not a lot of options. It is too late for most of the residents to start their retirement over somewhere else and all they have to look forward to is becoming a patient in the Hospital, a prospect that is most frightening.

Lastly, if you do not think the employees or patients or residents of Baptist Memorials Center are worth taking care of, I hope you think that the *reputation* of Baptist Memorials *is* worth saving. Taylor Henley is paying his secretary, Mary Butts, $14.12 per hour to type for him and to be a party to his immoral, extra marital affair. Their behavior has been witnessed by both employees and residents who have walked in on the two of them in very compromising positions where there was no doubt as to what was going on. Members of the Board know about this as well as Taylor Henley's off-color remarks and base actions towards other females he comes in contact with. Yet because it has not reached PTL scandal proportions, you have opted to ignore what has already been substantiated. These are not just rumors or inuendo.(sic) You have the option of letting Taylor Henley and Mary Butts resign gracefully and quietly now before this affair becomes public. There are a lot of people who are outraged by your apparent acceptance of this situation and his treatment of those who live and work at Baptist Memorials. Taylor Henley has made a mockery of your Ministry and has left Baptist Memorials as well as the Board of Trustees open for multiple lawsuits on many grounds.

It's time you all took responsibility for the problems at Baptist Memorials and started your own investigation if you have doubts that these allegations are true. By sitting back and doing nothing, you are condoning Taylor Henley's immoral behavior and are as guilty as he is. The time to act is now before Baptist Memorials becomes a public embarrassment. I do not feel comfortable going to my pastor about this because I know that Dr. McBride has been informed of the problems and has chosen to look the other way also. How can we as Christians expect to minister to those in need when all of our efforts are tainted by one man?

My conscience is clear, I can look myself in the mirror and I can sleep at night because I have prayed for many months about this and I have done all I can to give you a chance to do what's right.

CASE NO. CA-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 26

March 26, 1988

Board of Trustees
Baptist Memorials Geriatric Center
902 N. Main
San Angelo, Texas 76903

Dear Board Member:

It has been nearly six weeks since you were apprised of a potentially disasterous and embarrassing situation that exists at Baptist Memorials Center in San Angelo. As of this time, I, as well as a large group of others, can see no action being taken on the part of the Board to rectify the situation.

We were asked to write about our problems and things that we've seen in regards to Taylor Henley and were told that we would probably be contacted by the Board to verify what we have written. Although we are all afraid of reprisals, we agreed because the situation has gone on much too long. Our statements were passed on to Mr. Frank Sanders, Chairman of the Board of Trustees, and it was also our understanding that he would send copies of our statements to all of the Board members so that you would all know the extent of the problems. As of this time, none of us have heard from any Board members. We don't understand why it is so difficult for the Board to stand up to Taylor Henley or to ask questions of people who live or work at Baptist Memorials to verify what is happening. We do not understand how you can sit back and

allow one man to destroy what so many have worked so hard to build. Do you have any idea what a public scandal could do to Baptist Memorials? The very fact that Jim Bakker, Jimmy Swaggart and Walker Railey, in their public positions could be guilty of sexual misconduct and intimidation should be enough to make you realize that Taylor Henley could be guilty too. Why would we as Christian individuals make up such stories?

The people at Baptist Memorials need help and if we can't get it from a Board of Trustees that is supposed to care about what happens here, maybe we can get it from others on the outside. You have a responsibility to the patients, their families, employees and Village and High Rise residents, but we won't sit back and be silent if you choose not to accept that responsibility. We have gone through many hours of prayer seeking deliverance and direction and our God will forgive us for what we're being forced to do...we're not so sure He'll be as forgiving where the Board of Trustees and Taylor Henley are concerned.

Our Prayers are With You,

CASE NO. CA6-89-0002-C
Mary Collins
VS. Baptist Memorials
PLAINTIFF'S EXHIBIT 27

September 9, 1988

Board of Trustees
Baptist Memorials Center
902 N. Main
San Angelo, Texas 76903

Dear Board Member:

I suppose this letter is being written in an attempt to call upon your collective consciences to put an end to the immoral and embarrassing situation you seem to be condoning here at Baptist Memorials Center.

A lot of us are having a hard time understanding how you as Board members and supposedly Christian individuals could allow Taylor Henley to continue being in control of Baptist Memorials and the lives of all of us who live here and those who work for the Center. In light of the fact that Taylor Henley's affair with Mary Butts has been brought to your attention (and can be substantiated if you care to research the question), we cannot understand how you can allow the situation to continue. And not only does Taylor Henley feel that he has put the Board in its place, now we must endure having our noses rubbed in this mess by Taylor Henley moving Mary Butts right here among us in the Village. And we are APPAULED (sic) to say the very least. It doesn't matter what Taylor Henley says in an attempt to justify his actions, the fact remains that Mary Butts is no more than a secretary with a great sounding job title and a terrific pay check. Maybe it's easy for you to

look the other way because you don't have to deal with it everyday, but there are a lot of us depending on you to do what is right. Please.....

We also do not understand how Taylor Henley can have an article placed in the local newspaper announcing a multi-million dollar expansion of the Center when this place is falling down around our ears. We have been taken advantage of and down right lied to by Taylor Henley and there are many of us who are looking around, and right now, Rio Concho is looking more appealing all the time.

If you don't care about what goes on here, maybe it is time to step aside and let someone else get involved and put an end to this tasteless situation. We need someone to care about us and a place that means so much to so many. Again, this letter is unsigned and I think that from the actions of the Board thus far, you can understand why. May God lead you to do what is right.

Yours in Christ

APPENDIX H

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

FILED
AUG 29 1991

MARY A. COLLINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BAPTIST MEMORIALS GERIATRIC CENTER and ODUS TAYLOR HENLEY,	)	
	)	Civil Action No.
Defendants.	)	CA-6-89-002-C

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court submits and enters these additional findings of fact and conclusions of law, consistent with the Opinion and Order remanding such cause entered on August 2, 1991, by the Court of Appeals for the Fifth Circuit in Appeal No. 90-1396. This Court thereby makes the following findings of fact in reference to the Title VII claims of the Plaintiff:

1. By reference, this Court hereby adopts the former

findings made by the jury at the trial on this cause. Such answers to the jury questions are referred to and incorporated herein as if set forth in full.

2. This Court hereby further adopts by reference, as if set forth fully herein, its original findings of fact entered in this Court's Order dated May 3, 1990, and hereby supplements and submits these additional findings in reference to the quid pro quo theory claim alleging Title VII violations as propounded by the Plaintiff.

3. Ms. Collins, as a female employee of the Center, was a member of a protected group as defined under Title VII.

4. Ms. Collins was not subjected to sexual advances or requests for sexual favors. Ms. Collins was, however, subjected to unwelcome physical contact evidenced by Mr. Henley's embraces and/or hugs, during her early employment. Although Ms. Collins never rejected Henley's touchings, they were unsolicited and uninvited and, based upon the evidence submitted, this Court further finds that such contact was offensive to Ms. Collins. A majority of the female employees did not consider Henley's hugs as offensive.

5. This Court finds that the overwhelming evidence shows that Henley was a demonstrable person. The Court is convinced that Henley did hug and pat employees, residents and patients. The credible evidence shows that Henley hugged and patted males as well as females. However, the touchings which were sometimes perceived as offensive, were the touchings directed at female employees.

6. Although Ms. Collins found the hugging to be

offensive, personally, she never complained to Taylor Henley evidencing her disapproval. Ms. Collins' dissension and/or disapproval of Henley's physical conduct did not affect any tangible aspect of her compensation. Ms. Collins' disapproval of Henley's physical contacts did not affect any tangible aspect of Ms. Collins' terms, conditions or privileges of her employment. Ms. Collins received substantial raises commensurate with her responsibilities and performances while employed at the Center. This Court further finds that Ms. Collins was not denied any tangible benefits due to her rejection of the harassment. Ms. Collins' rejection of the harassment was not an express or implied condition to the receipt of any job benefit. Finally, Ms. Collins' termination from employment was not caused by Ms. Collins' rejection of the harassment by Henley, but rather was for insubordination and unsatisfactory performance of Ms. Collins.

7. There is no compelling evidence which suggests that tangible job benefits were tendered to other employees conditioned upon their acceptance of Henley's touchings or pettings. This Court is further not persuaded that Ms. Collins would have received higher raises had she accepted the harassment or been more receptive to Mr. Henley.

8. The credible evidence shows that Mary Butts received substantial salary raises and promotions based upon job performance. Credible evidence shows that Ms. Butts retained the responsibilities and duties of Executive Secretary even after her promotion to Assistant to the Executive Director and Retirement Administrator. Any promotions or remunerations were not disparately disproportionate to that of the other employees. This Court is convinced that Ms. Butts received salary increases commensurate with her increased responsibilities and duties.

This Court finds that proportionately similar salary increases during comparable time periods were granted to Kay Wright, Carolyn Owings, Gloria Hammond and Patricia Hiller which were based upon job responsibility and merit of performance. These increases were not affected by any acceptance or rejection of any sexual harassment. Therefore, after weighing the credibility of the evidence regarding this factual issue, the Court finds that there was no disparate treatment toward Ms. Collins as a result of her disapproval of the physical contact which she considered to be offensive. Although there is conflicting evidence, this Court finds that Ms. Collins was one of few who considered Henley's hugs inappropriate.

9. Although the Board of Trustees of the Center had notice of alleged sexual harassment, the evidence, given in its most credible light, suggests possible fraternizing between Henley and Ms. Butts. However, allegations contained in the letters forwarded to Bill Denton are incredulous when compared to the testimony presented at trial. Furthermore, this Court finds that Bill Denton and the Board investigated and attempted to substantiate the allegations of the improprieties of Henley. After weighing the credibility of the allegations, this Court finds that neither Henley nor the Center treated Ms. Collins or other employees disparately as a result of their acceptance or rejection of Henley's touchings and hugs.

CONCLUSIONS OF LAW

Any conclusion of law more properly characterized as a finding of fact shall be adopted as such. Any finding of fact more properly characterized as a conclusion of law shall be adopted as such.

Based upon the foregoing findings of fact, and those

previously adopted by reference herein, this Court makes the following conclusions of law in reference to the Plaintif's Title VII claims based upon the Plaintiff's alleged theory of quid pro quo.

1. This Court hereby applies the elements of proof necessary for the Plaintiff to establish a violation of Title VII on grounds of sexual harassment under a quid pro quo theory as outlined in *Jones v. Flagship International*, 793 F.2d 714 (5th Cir. 1986).

2. Therefore, this Court concludes that the Plaintiff, Collins, as a female employee, belongs to a protected group. Collins was briefly subjected to unwelcome sexual harassment consisting of Henley's hugs during her early employment with the Center. Even though this Court is convinced that such hugs were not intended as sexual in nature on the part of Mr. Henley, they were perceived as offensive by the Plaintiff.

3. This Court further concludes that the harassment consisting of the hugs and contacts perceived by the Plaintiff as offensive were based upon sex because the preponderance of the evidence shows that these hugs and embraces were performed upon female employees and not males. Therefore, this Court concludes that the alleged harassment or offensive touching was based upon sex.

4. Collins' rejection to Mr. Henley's physical contacts or huggings did not affect any tangible aspect of Collins' compensation, terms, conditions, or privileges of her employment. This Court further concludes that Collins' rejection of the harassment was neither an express nor an implied condition to the receipt of any job benefit nor was it a cause of her termination from the Center. In addition, this Court concludes that Collins was not denied any tangi-

ble job benefits nor did she receive the reprimands from Henley because of her rejection to his sexual harassment.

5. This Court further concludes that since there was no causal connection between Collins' rejection of the sexual harassment which affected any of the tangible aspects of her employment, which absolves Henley of any liability for sexual harassment under Title VII based upon quid pro quo, then, as such, the Center is not liable to Collins under the theory of respondeat superior.

This Court, upon further review of the evidence, hereby concludes that the Plaintiff has not sustained her burden of proving her case of sexual harassment as defined under Title VII under the quid pro quo theory.

Dated August 29, 1991.

/s/ Sam R. Cummings

SAM R. CUMMINGS
United States District Judge